

Qualifying Country Offer—\$9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of \$9,000.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)—\$600,000

Domestic Offer—\$910,000

Qualifying Country Offer—\$920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of \$900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price which is awarded at \$599,000.

Example 2

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$100 duty)—\$6,000

Domestic Offer—\$8,500

Qualifying Country Offer—\$7,800

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty (\$6,000).

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)—\$880,500

Domestic Offer—\$950,000

Qualifying Country Offer—\$880,000

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at \$879,500.

Example 3

Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including \$150 duty)—\$9,600

Qualifying Country Offer—\$9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

Alternate II: Duty Exempted:

Nonqualifying Country Offer (including \$1,000 duty)—\$880,500

Qualifying Country Offer—\$880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the

nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at \$879,500.

Example 4

Alternate I:

Offer of U.S. Made End Product which is not a Domestic Offer—\$800,000

Domestic Offer—\$820,000

Eligible Product—\$830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of \$1,200,000.

Alternate II:

Offer of U.S. Made End Product which is not a Domestic Offer—\$800,000

Eligible Product—\$820,000

Domestic Offer—\$830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1289, Jan. 10, 1994; 63 FR 11531, Mar. 9, 1998; 64 FR 2598, Jan. 15, 1999]

225.107 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in 225.105 when using Federal supply schedules.

225.108 Excepted articles, materials, and supplies.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.108(d)(1) and in paragraph (d)(1) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

Department of Defense

225.302

(d)(1) Aluminum clad steel wire. Sperm oil.

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225-7000, Buy American Act—Balance of Payments Program Certificate, instead of the provisions at FAR 52.225-1, Buy American Certificate, and FAR 52.225-6, Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(b) For oral solicitations inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(i) The items are excepted either on a blanket or an individual basis; or

(ii) The price of the nonqualifying country end product is the low offer under the evaluation procedures in 225.105.

(d) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clauses at FAR 52.225-3, Buy American Act—Supplies, and FAR 52.225-7, Balance of Payments Program, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under Appropriations and Authorization Act restrictions (see 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see 225.71); and

(C) End products restricted under the authority of FAR 6.302-3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restrictions in paragraphs (d)(ii) (A) or (B) of this section.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992; 59 FR 1289, Jan. 10, 1994; 63 FR 11532, Mar. 9, 1998]

225.109-70 Additional provisions and clauses.

(a) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(1) 252.225-7001, Buy American Act and Balance of Payments Program.

(2) 252.225-7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(3) 252.225-7021, Trade Agreements.

(4) 252.225-7036, Buy American Act—North American Trade Agreement Implementation Act—Balance of Payments Program.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

[63 FR 11532, Mar. 9, 1998]

Subpart 225.2—Buy American Act—Construction Materials

225.202 Policy.

(a)(3) A nonavailability determination is not required for construction materials listed in FAR 25.108(d)(1) or in 225.108(d)(1). For other materials, a nonavailability determination must be approved at the levels specified in 225.102(b)(ii). Use the estimated value of the construction materials to determine the approval level.

[56 FR 36367, July 31, 1991, as amended at 62 FR 34122, June 24, 1997]

Subpart 225.3—Balance of Payments Program

225.302 Policy.

(a) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—